

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare – Visakhapatnam District – Revision petition filed by D.Omunamasivaya S/o Late Appa Rao R/o Vardhanapally, Paderu Mandal, Visakhapatnam District – Against the order of the Agent to Govt. in CMA.No.1/1991 Dated:09-06-2006 – Dismissed- Orders Issued .

SOCIAL WELFARE (LTR-2) DEPARTMENT

G.O.MS.NO: 151

Dated: 23-07-2008.

Read the following:

1. From Sri K. Sai Rama Murthy counsel for the petitioner, Revision Petition Dated: -07-2006.
2. Govt. Memo No. 8695/LTR2/06 Dt: 05-09-2006.
3. From Additional Agent to Govt. Paderu Visakhapatnam Rc.No.84/2002SDT (RP) Dt: 27-10-2006.
4. Govt. Memo No 8695/LTR2/2006 Dt: 21-08-07, 03-09-2007, 06-11-2007, 18-03-2008.

ORDER:

In the reference first read above Sri D.Omunamasivaya S/o Late Appa Rao R/o Vardhanapally, Paderu Mandal, Visakhapatnam District, has filed Revision petition before the Govt. against the orders of the Additional Agent to Govt. in ACMA 1/91 Dt: 09-06-2006 in respect of Scheduled Thatched house measuring an extent of Acres 0.02 situated in Vardhanapally Village of Paderu Mandal, Vishakhapatnam District. The main ground of the revision petition among others are.:

1. The order of the Additional agent to the Govt. and project officer ITDA Paderu is contrary to law and vitiated by lack of jurisdiction.
2. The order of the Additional Agent to the Govt. and project officer ITDA Paderu has absolutely no jurisdiction to hear and disposed it of as the Agent to Govt. alone is competent to hear the appeal.
3. The Additional Agent to the Govt. and project officer ITDA Paderu has absolutely no jurisdiction to hear the appeal as under Sec 3 (a) an appeal against the decree or order passed by the Agency Divisional Officer lies only to the Agent to the Government and he alone has Jurisdiction to hear and dispose of the appeal.
4. Additional Agent to the Govt. and Project Officer ITDA Paderu has no Jurisdiction to hear the appeal as the District Collector alone was designated as Agent to Government under the provisions of Regulation 1 of 1959.
5. Additional Agent to the Govt. and Project Officer ITDA Paderu ought to have noted that the Agency Divisional Officer and Special Deputy Collector, Tribal Welfare, Paderu has no Jurisdiction to entertain L.T.R.No.34/89 and pass the order of ejectment as there is no transfer as contemplated by the provisions of A.P. Regulation 1 of 1959.
6. Additional Agent to the Govt. and Project Officer ITDA., Paderu ought to have noted, that the appellant mother's paternal uncle's father occupied the Scheduled property about 80 years back and constructed a hut and was living therein and therefore the provision of the regulation 1 of 1959 are not attracted, after his death, his son, the appellant's paternal uncle was residing therein and after his death, mother of the appellant was living therein along with the appellant.
7. Additional Agent to the Govt. and Project Officer ITDA., Paderu ought to have allowed the appeal and set aside the order of ejectment passed by the Agency Divisional Officer and Special Deputy Collector, Paderu, Dt: 09-06-2006 in L.T.R. No.34/89 on his file.

2. The brief history of the case is that the case was initiated suo-motu on the report of Special Deputy Tahsildar (T.W) Paderu. Tribal petitioner Sri Javvadi Samudram S/O Bojayya deposed that 20 years back his father (late) Bojayya had sold thatched house covering extent of 0.02 cts in varthanapalli village to one non-tribal Sri Chikati Somulu for Rs 200/-. Sri Chikati Somulu was residing in the house for about 10 years and later on given to her brother's daughter Sri Divadari Gurulakshmi W/O Appa Rao . Chikati Somulu also died about one year back. Sri Chikati Somulu belonged to Jangam caste had also agreed that he purchased the house from Javvadi Bojayya for Rs. 200/- about forty years back. Now, his brother's daughter Smt .Divadari Gurulakshmi is residing there. The tribal petitioner prayed the court for restoration under LTR Act. Smt Divadari Gurulakshmi W/O Late Appa Rao, the respondent No:2 deposed that the land was given by her paternal uncle Sri Chikati Somulu who died one year ago. Her husband, Sri Appa Rao also died about nine years back. Now she is living in the house with her 2 small children and eking her livelihood by running a tea bunk. After examining both the parties , the Special Deputy Collector (T.W) Paderu had passed orders in LTR No:34/89 dated: 06-04-1991 to eject and restore the said property to the petitioner Sri Javvadi Somulu . Aggrieved by order of the Special Deputy Collector (T.W) Paderu, the appellant filed an appeal petition in case No:11/1991 (LTR) before the Agent to Government , District Collector Visakhapatnam . As per the orders issued in G.O. Ms. No:193, Revenue Department, dated:17-4-2002 and G.O.Ms.No.274 GA(SplA) Department dated: 15-06-2001 , delegating the powers vested with the Agent to Government to the Project Officer, I.T.D.A & Additional Agent to Government, the District Collector, Visakhapatnam transferred the LTR case to the Additional Agent to Government & Project Officer, I.T.D.A, Paderu.

3. The Additional Agent to Government Paderu after hearing both the parties observed that "as seen from the orders of Special Deputy Collector (T.W) Paderu in LTR No: 34/89, the immovable property i.e thatched house was purchased from tribal Javvadi Bojayya by the Paternal uncle of appellant's mother who is a non-tribal. The Mandal Revenue Officer Paderu reported that Sri D.Omunamasivaya S/O Late Smt D.Gurulakshmi is presently residing in the said thatched house whose family had migrated from Vizianagaram District about 50 years back. Smt J.Kasulamma W/O Late Samudram and daughter-in-law of Javvadi Bojayya is residing in another house in the same village and she is a widow. Hence, the transfer of immovable property took place between tribal to non-tribal in contravention of LTR provisions . The Additional Agent to Government confirmed the orders of Special Deputy Collector (T.W) Paderu, vide CMA No:1/91 dated: 09-06-2006. Aggrieved by the orders of the Agent to Govt. filed the Revision petition before the Government.

4. In the reference 2nd read above the Agent to Govt. Paderu, Visakhapatnam District was requested to furnish Para wise remarks and case records, The same were furnished vide reference 3rd read above. After careful examination of the Para wise remarks and case records, notices were issued to the concerned to attend the hearing of the revision petition on 31-08-2007, 17-09-07 and 20-11-07 and was finally heard on 27-03-2008. Both the petitioner and his counsel were absent for all hearings.

5. Government after careful examination of the records of lower and appellate authorities , grounds in the Revision Petition and material evidence on record held that it is clear from the orders of lower and appellate authorities that the non-tribal Cheekati Somulu purchased the immovable property i.e. thatched house for Rs.200/- from the tribal viz. Sri. Javvadi Bojayya some 20 years back (as per deposition of Sri Javvadi Samudram S/o late Bojayya before SDC (TW) Paderu on 27-08-1989) i.e. clearly much later to Act 1/59 came into force Subsequently, the non-tribal Cheekati Somulu gave it to his brother's daughter Smt. Divadari Gurulakshmi which was again inherited to the Revision Petitioner Sri D.Omunamasivaya. The non-tribal failed to prove his valid possession.

6. Government after careful examination of the case records of the petitioner hereby finds no reason to interfere with the orders of the Lower Court and uphold the order of the Additional Agent to the Govt. & PO ITDA Paderu in ACMA No. 1/91 Dt:09-062006 and the Revision petition is dismissed accordingly.

7. The Counsel for the petitioner is requested to inform his client accordingly. The Collector Visakhapatnam / Additional Agent to Govt. and Project Officer Paderu are requested to take necessary action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

V.NAGI REDDY,

PRL.SECRETARY TO GOVERNMENT

To

The Collector, Visakhapatnam District.

With RPAD for the following records.

AST Case file No.8/90 containing 50 pages,

LTR File No.34/89 containing 36 pages,

Sri.K.Sai Rama Murthy Advocate Flat No.002 (2-1-733)

Manihar Apts. Vidyanagar Hyderabad. 44.

Sri. Omunamasivaya Resident of Varthanapalli Village,

Paderu Mandal, Visakhapatnam District.

Smt. Javvadi Kasulama W/o Late Samudram

R/o Varthanapalli Village, Paderu Mandal

Visakhapatnam District.

//FORWARDED BY ORDER//

SECTION OFFICER